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Attorneys for Busey Bank

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

BENJA INCORPORATED,
Debtor.

Case No. 20-30819

Chapter 11

Judge Dennis Montali

**CREDITOR BUSEY BANK'S MOTION
FOR ORDER SETTING HEARING ON
SHORTENED NOTICE; DECLARATION
OF JERRY L. SWITZER, JR. IN
SUPPORT**

Date: October 23, 2020

Time: 10:30 a.m.

Place: Hearing to be conducted by
telephone via CourtCall.

*All interested parties should consult the
Bankruptcy Court's website at
www.canb.uscourts.gov for information
about court operations during the COVID-19*

pandemic. The Bankruptcy Court's website provides information regarding how to arrange a telephonic or video appearance. If you have any questions regarding how to appear at a court hearing, you may contact the Bankruptcy Court by calling 888-821-7606 or by using the Live Chat feature on the Bankruptcy Court's website.

Related Documents: [19, 20, & 21]

Busey Bank, as creditor of Benja Incorporated, debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case"), hereby submits this Motion (the "Motion to Shorten"), pursuant to Rule 9006-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Local Rules"), for entry of an order shortening time for a hearing on October 29, 2020, at 10:30 a.m. (prevailing Pacific Time), or as soon thereafter as is convenient for the Court, on Busey Bank's concurrently filed *Motion for the Appointment of a Chapter 11 Trustee or, in the alternative, for Conversion of the Case to Chapter 7 of the Bankruptcy Code* (the "Motion"). [Dkt. No. 19]. The Debtors request that any responses or objections be in writing and filed with Court and served by 4:00 p.m. (Pacific Standard Time) on October 28, 2020.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and Bankruptcy Local Rule 5011-1(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

On October 15, 2020 (the "Petition Date"), the Debtor commenced this case by filing a

1 voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).
2 The Debtor continues to operate and manage its business as a debtor in possession pursuant to
3 Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been appointed in the
4 Chapter 11 Case.

5 **III. SHORTENING TIME FOR HEARING ON THE MOTION IS WARRANTED**

6
7 Pursuant to Bankruptcy Local Rule 9014-1(b)(1)(D), a motion to appoint a trustee is to be
8 set for an actual hearing. Bankruptcy Local Rule 9006-1(a) provides that, except as set forth
9 therein, “approval of the Court is required to enlarge or to shorten time to perform any act or file
10 any paper pursuant to the Federal Rules of Civil Procedures, the Bankruptcy Rules, or these
11 Bankruptcy Local Rules.” Busey Bank requests that its Motion be set for hearing on October 23,
12 2020, or as soon thereafter as is convenient for the Court. Busey Bank requests that any responses
13 or objections to the Motion be presented at the hearing.

14
15 In support of this Motion to Shorten, Busey Bank submits the Declaration of Jerry L.
16 Switzer (“Switzer Declaration”), filed contemporaneously herewith, along with a proposed form
17 of order granting the relief requested.

18
19 As set forth in the Switzer Declaration, the relief requested in the Motion is necessary, to
20 among other things, protect the interests of the Debtor’s creditors, and all of such relief is
21 necessary to preserve and maximize the value of the Debtor’s estates and operations for the
22 benefit of all parties in interest. As further set forth in the Switzer Declaration, counsel for Busey
23 Bank contacted counsel for the United States Trustee, and Debtor’s counsel, and received no
24 opposition to this request to shorten time.

25
26 Based on the foregoing, the Debtors request that notice be shortened to permit the Motion
27 to be heard on October 29, 2020, at 10:30 a.m. (Pacific Standard Time), and for written objections,

1 if any, to be filed and served by 4:00 p.m. (Pacific Standard Time) on October 28, 2020.

2 **IV. NOTICE**

3 Notice of this Motion will be provided to (i) the Office of the United States Trustee for
4 Region 17 (Attn: Jared A. Day, Esq., Jared.A.Day@usdoj.gov); (ii) Debtor's counsel; (iii) the
5 Office of the United States Attorney for the Northern District of California; and (iv) those persons
6 who have formally appeared in this Chapter 11 Case and requested service pursuant to Bankruptcy
7 Rule 2002. Based on the urgency of the circumstances surrounding this Motion and the nature of
8 the relief requested herein, Busey Bank respectfully submits that no further notice is required.
9

10 No previous request for the relief sought herein has been made by Busey Bank to this or
11 any other court.

12 WHEREFORE Busey Bank respectfully requests entry of an order granting the relief
13 requested herein and such other and further relief as the Court may deem just and appropriate.
14

15
16 Dated: October 20, 2020

Respectfully submitted,

17 **POLSINELLI LLP**

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19 By: /s/ Randye B. Soref
20 Randye B. Soref
Tanya Behnam

21 *Attorneys for Creditor Busey Bank*
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

BENJA INCORPORATED,
Debtor.

Case No. 20-30819

Chapter 11

Judge Dennis Montali

**DECLARATION OF JERRY L.
SWITZER, JR. IN SUPPORT OF
CREDITOR BUSEY BANK'S MOTION
FOR ORDER SETTING HEARING ON
SHORTENED NOTICE**

Related Documents: [19, 20, & 21]

DECLARATION OF JERRY L. SWITZER, JR.

Pursuant to 28 U.S.C. § 1764, Jerry L. Switzer, Jr. declares as follows under the penalty
of perjury:

1 1. I am an attorney with the law firm of Polsinelli LLC. I am admitted to practice in
2 the State of Illinois and New York. My application to appear before this Court *pro hac vice* is
3 forthcoming.

4 2. I submit this Declaration in support of the Busey Bank Motion for an Order Setting
5 Hearing on Shortened Notice (the “Motion to Shorten”), pursuant to Rule 9006-1 of the
6 Bankruptcy Local Rules for the United States Bankruptcy Court for the Northern District of
7 California, for a hearing on Motion for the Appointment of a Chapter 11 Trustee or, in the
8 alternative, for Conversion of the Case to Chapter 7 of the Bankruptcy Code (the “Motion”) [Dkt.
9 No. 19] on October 29, 2020, at 10:30 a.m. (prevailing Pacific Time).

10 3. Busey Bank requests that any responses or objections to the Motion be presented
11 at the hearing.

12 4. The relief requested in the Motion to Shorten is necessary, to among other things,
13 protect the interests of the Debtor’s creditors, and all of such relief is necessary to preserve and
14 maximize the value of the Debtor’s estates and operations for the benefit of all parties in interest.
15 As set forth in detail in the Motion, the Debtor has committed extensive fraudulent actions by and
16 through Andrew J. Chapin (“Chapin”), the Debtor’s purported Chief Executive Officer and
17 Director. Chapin has engaged, and has caused the Debtor to engage, in an extensive pattern of
18 malfeasance and fraud, as set forth in the Declaration of Joe Alouf, the former Interim President
19 and Chief Financial Officer of the Debtor, and the Declaration of Michael McElhone, a Vice
20 President and Special Assets Officer of Busey Bank, which necessarily requires investigation by
21 a trustee.

22 5. Busey Bank has not previously requested a time modification related to the subject
23 of this request, whether by stipulation or Court order.

24 6. There will be no effect on the schedule for the case if the Motion to Shorten is
25 granted.

1 7. On October 20, 2020, at or around 5:51 p.m. (Pacific Time), I sent an e-mail to
2 Paul Manasian, the Debtor's counsel, regarding Busey Bank's request to shorten time on the
3 Motion.

4 8. On October 20, 2020, at or around 5:59 p.m. (Pacific Time), I sent an e-mail to
5 Jared Day, counsel for the United States Trustee ("UST"), regarding Busey Bank's request to
6 shorten time on the Motion.
7

8 9. As of the filing, I have been informed by the UST that they do not have an
9 objection to this request.

10 10. As of the filing, I have not received a response from the Debtor's counsel.

11 11. Except as otherwise indicated herein, I have personal knowledge of the matters set
12 forth herein and, if called as a witness, would testify competently thereto.
13

14 I declare under penalty of perjury that the foregoing is true and correct.
15

16 Executed this 20th day of October, 2020.
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18
19 /s/ Jerry L. Switzer, Jr.
20 Jerry L. Switzer, Jr.
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CERTIFICATE OF SERVICE

I, the undersigned, declare that I am employed in the County of Los Angeles. I am over the age of 18 years and not a party to the within entitled action. My business address is 2049 Century Park East, Suite 2900, Los Angeles, California 90067.

A true and correct copy of the foregoing document entitled (specify): **CREDITOR BUSEY BANK'S MOTION FOR ORDER SETTING HEARING ON SHORTENED NOTICE** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On October 20, 2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On October 20, 2020, I served the document by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, to all parties entitled to receive regularly mailed notices, addressed as follows:

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on October 20, 2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA OVERNIGHT MAIL
Hon. Dennis Montali
U.S. Bankruptcy Judge
Mail Box 36099
450 Golden Gate Avenue
San Francisco, CA 94102

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 20, 2020 Cindy Cripe

Date

Printed Name


Signature

ATTACHMENT TO SERVICE LIST

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)

Jared A. Day on behalf of U.S. Trustee Office of the U.S. Trustee / SF jared.a.day@usdoj.gov
ankey.to@usdoj.gov

Mark K. Slater on behalf of Debtor Benja Incorporated mslater@slaterhersey.com
amoses@slaterhersey.com

Office of the U.S. Trustee / SF USTPRegion17.SF.ECF@usdoj.gov

Paul E. Manasian on behalf of Debtor Benja Incorporated manasian@mrlawsf.com
gradl@mrlawsf.com

Randy B. Soref on behalf of Creditor Busey Bank rsoref@polsinelli.com

Tanya Behnam on behalf of Creditor Busey Bank tbehnam@polsinelli.com
tanyabehnam@gmail.com

2. SERVED BY UNITED STATES MAIL:

Debtor Benja Incorporated 26 Cragmont Avenue San Francisco, CA 94116	Debtor's Attorney Paul E. Manasian, Esq. Law Offices of Paul E. Manasian 1310 65th Street Emeryville, CA 94608	
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3. SERVED BY EMAIL

Jared.A.Day@usdoj.gov
Jared A. Day
U.S. Department of Justice
Office of the U.S. Trustee, Region 17
300 Booth Street, Suite 3009
Reno, NV 89509